

UNITED STATES DISTRICT COURT

SEAL BY ORDER
OF THE COURT

NORTHERN DISTRICT OF CALIFORNIA A 11: 54

SAN JOSE DIVISION

RICHARD W. WIEKING
CLERK
U.S. DISTRICT COURT
NO. DIST. OF CA. S.J.

THE UNITED STATES OF AMERICA

vs.

ANDREW THOMAS RUSSO, DENNIS LEBORGNE,
DAVID JOHN, and JOHN F. TUIE

INDICTMENT

COUNT ONE: Title 21, United States Code, Sections 846- Conspiracy to Distribute Controlled Substances.

COUNT TWO: Title 18, United States Code, Sections § 1956(h) - Conspiracy to Launder Money.

COUNTS THREE THROUGH TEN-: Title 18, United States Code, Section § 1956(a)(1)(4)(i) - Promotional Money Laundering)

A true bill.

J. P. Ruiton

Foreperson

Filed in open court this 15th day of November

A.D. 2006

[Signature]

UNITED STATES MAGISTRATE JUDGE

| | |
|--|----------------|
| DOCUMENT NO. | CSA's INITIALS |
| 1 | 0 |
| DISTRICT COURT CRIMINAL CASE PROCESSING | |

*NO BAIL ARREST WARRANT AUTHORIZED
FOR EACH DEFENDANT*

Bail. \$ _____

KEVIN V. RYAN (CASBN 118321)
United States Attorney

FILED

2006 NOV 15 A 11: 54

RICHARD W. WIEKING
CLERK
U.S. DISTRICT COURT
NO. DIST. OF CA. S.J.

SEALED BY ORDER
OF THE COURT

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

SAN JOSE DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

v.

ANDREW THOMAS RUSSO,
DENNIS LEBORGNE, a/k/a Frenchy,
DAVID JOHN, and
JOHN F. TUIE,

Defendants.

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RMW

VIOLATIONS: 21 U.S.C. § 846 –
Conspiracy to Distribute Controlled
Substances; 18 U.S.C. § 1956(a)(1)(A)(i) –
Money Laundering; § 1956(h) - Conspiracy
to Commit Money Laundering; 21 U.S.C. §§
853(a) – Drug Forfeiture; and 18 U.S.C. §
982(a)(1) – Money Laundering Forfeiture

SAN JOSE VENUE

INDICTMENT

The Grand Jury charges:

BACKGROUND

At times relevant to this Indictment:

CONTROLLED SUBSTANCES ACT

1. The United States Drug Enforcement Administration (“DEA”) was the agency of
the United States charged with the responsibility of enforcing the controlled substances laws and
regulations of the United States.

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U.S. v. RUSSO, et al.
INDICTMENT

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| DISTRICT COURT CRIMINAL CASE PROCESSING | |

1 2. DEA was also responsible for, among other things, regulating the pharmaceutical
2 industry, medical professionals, researchers, manufacturers, and distributors in complying with
3 the Controlled Substances Act ("CSA"), codified at 21 U.S.C. § 801 et seq. The CSA governed
4 the manufacture, distribution, and dispensing of controlled substances in the United States.

5 3. Pharmacies dispensing controlled substances were required to register with the
6 DEA. A separate registration was required for each principal place of business where controlled
7 substances were distributed or dispensed. A DEA registered pharmacy could engage in activities
8 only as authorized by the state where the pharmacy was located.

9 4. The CSA was the federal law that placed all controlled substances into one of five
10 categories, or schedules, according to the drug's potential for abuse, physical and psychological
11 dependence liability, and current accepted medical use. Various prescription drugs were
12 scheduled substances under the CSA. There were five schedules of controlled substances -
13 schedules I, II, III, IV, and V. Abuse of Schedule III drugs may lead to moderate or low physical
14 dependence or high psychological dependence. Abuse of Schedule IV drugs may lead to more
15 limited physical dependence or psychological dependence relative to the drugs or other
16 substances in Schedule III.

17 5. Title 21, Code of Federal Regulations, Section 1306.04(a) provided:

18 A prescription for a controlled substance to be effective must be
19 issued for a legitimate medical purpose by an individual practitioner
20 acting in the usual course of his professional practice. The
21 responsibility for the proper prescribing and dispensing of controlled
22 substances is upon the prescribing practitioner, but a corresponding
23 responsibility rests with the pharmacist who fills the prescription. An
24 order purporting to be a prescription issued not in the usual course of
25 professional treatment or in legitimate and authorized research is not
26 a prescription within the meaning and intent of section 309 of the Act
27 (21 U.S.C. 829) and the person knowingly filling such a purported
28 prescription, as well as the person issuing it, shall be subject to the
 penalties provided for violations of the provisions of law relating to
 controlled substances.

25 6. Phentermine, a stimulant, was classified under federal narcotics laws as a
26 Schedule IV controlled substance.

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1 STATE LAWS AND MEDICAL ASSOCIATION POSITIONS

2 7. An example of some state laws that imposed requirements upon doctors and
3 healthcare professionals to take certain steps before they could prescribe, distribute, or dispense
4 controlled substances included:

5 CALIFORNIA LAW

6 Business and Professions Code

7 Section 4110. (a) No person shall conduct a pharmacy in the State of California unless he
8 or she has obtained a license from the board. A license shall be required for each
9 pharmacy owned or operated by a specific person. A separate license shall be required
10 for each of the premises of any person operating a pharmacy in more than one location.
11 The license shall be renewed annually. The board may, by regulation, determine the
12 circumstances under which a license may be transferred.

13 Section 4120. (a) A nonresident pharmacy shall not sell or distribute dangerous drugs or
14 dangerous devices in this state through any person or media other than a wholesaler who
15 has obtained a license pursuant to this chapter or through a selling or distribution outlet
16 that is licensed as a wholesaler pursuant to this chapter without registering as a
17 nonresident pharmacy.

18 Section 4067. (a) No person or entity shall dispense or furnish, or cause to be dispensed
19 or furnished, dangerous drugs or dangerous devices, as defined in Section 4022, on the
20 Internet for delivery to any person in this state without a prescription issued pursuant to a
21 good faith prior examination of a human or animal for whom the prescription is meant if
22 the person or entity either knew or reasonably should have known that the prescription
23 was not issued pursuant to a good faith prior examination of a human or animal, or if the
24 person or entity did not act in accordance with Section 1761 of Title 16 of the California
25 Code of Regulations.

18 Health and Safety Code

19 Section 11153. (a) A prescription for a controlled substance shall only be issued for a
20 legitimate medical purpose by an individual practitioner acting in the usual course of his
21 or her professional practice. The responsibility for the proper prescribing and dispensing
22 of controlled substances is upon the prescribing practitioner, but a corresponding
23 responsibility rests with the pharmacist who fills the prescription. Except as authorized by
24 this division, the following are not legal prescriptions: (1) an order purporting to be a
25 prescription which is issued not in the usual course of professional treatment or in
26 legitimate and authorized research; or (2) an order for an addict or habitual user of
27 controlled substances, which is issued not in the course of professional treatment or as
28 part of an authorized narcotic treatment program, for the purpose of providing the user
with controlled substances, sufficient to keep him or her comfortable by maintaining
customary use.

26 NORTH CAROLINA LAW

27 21 NCAC 46.1801 Right to Refuse a Prescription

28 (b) A pharmacist shall not fill or refill a prescription order if the pharmacist actually
knows or reasonably should know that the order was issued without a physical

1 examination of the patient and in the absence of a prior prescriber-patient relationship,
2 unless:

- 3 (1) the prescription order was issued for the patient by a psychiatrist;
- 4 (2) the prescription order was issued for the patient after discussion of the patient
- 5 status with a treating psychologist, therapist, or physician;
- 6 (3) the prescription order was ordered by a physician for flu vaccinations for
- 7 groups of patients or members of the public;
- 8 (4) the prescription order was for prophylactic purposes, such as the ordering of
- 9 antibiotics by a pediatrician for members of a child's family when the child has a
- 10 positive strep test;
- 11 (5) the prescription order was an emergency order for medication related to
- 12 pregnancy prevention; and
- 13 (6) the prescription order was an order for medications to be taken by groups
- 14 traveling to foreign countries.

15 21 NCAC 46.1805 Dispensing Drugs without a Prescription

16 The dispensing of or any delivery of a prescription drug, including the surrender of
17 control or possession in any manner which results in a delivery of a prescription drug,
18 without a valid prescription order is unlawful. Refilling a prescription for a prescription
19 drug without authorization is unlawful.

20 21 NCAC 46.1811 Excessive Dispensing of Prescription Drugs

21 Pharmacists shall not dispense and permit holders shall not allow a pharmacist to
22 dispense prescription drugs at such a rate per hour or per day as to pose a danger to the
23 public health or safety.

24 8. The American Medical Association ("AMA") was the largest association of
25 medical doctors in the United States. Its purpose was to advance the interests of physicians, to
26 promote better public health, to lobby for medical legislation, and to raise money for medical
27 education. Since at least 1999, the AMA publicly announced its position that a physician who
28 offers a prescription to a patient solely on the basis of an online questionnaire without ever
having examined the patient has generally not met the appropriate medical standards of care.

9. The Federation of State Medical Boards of the United States, Inc. ("FSMB") was
a national organization comprised of the 70 medical boards of the United States, the District of
Columbia, Puerto Rico, Guam and the U.S. Virgin Islands. On behalf of its membership,
FSMB's mission was to improve the quality, safety, and integrity of health care through the
development and promotion of high standards for physician licensure and practice. Since at least
2000, the FSMB has recognized that Internet web sites permitting customers to obtain
prescription drugs without an adequate evaluation by a physician poses an immediate threat to
public health and safety. As a result, FSMB has publicly announced its position that the

1 prescribing of medications by physicians based solely on an online questionnaire fails to meet an
2 acceptable standard of care and is outside the bounds of professional conduct.

3 INTERNET PHARMACIES

4 10. Individuals that operated web sites to sell pharmaceuticals generally created an
5 Online Pharmacy Affiliate Program ("OPAP") or joined an existing OPAP to manage their e-
6 commerce business. OPAPs were simply contractual agreements establishing an e-commerce
7 business to oversee the acquisition, sale and distribution of pharmaceuticals and other related
8 products. OPAPs generally consisted of five (5) or fewer interested parties involved in an online
9 transaction: (1) the customer; (2) an Affiliate site; (3) a Merchant site; (4) a Physician Network
10 and; (5) a Pharmacy Network. OPAP maintained merchant web sites ("Merchants") to facilitate
11 the sale of their products. OPAPs established accounting systems to receive and make payments;
12 opened bank accounts to hold operating capital; recruited affiliate web sites ("Affiliates"),
13 physicians and pharmacies; contracted for services provided by credit card and overnight
14 shipping companies; purchased and/or developed and maintained sophisticated software to track
15 all aspects of their business; and, provided Affiliates, Physician Networks and Pharmacy
16 Networks with e-business assistance and instruction.

17 11. Affiliate websites were the web sites the customer first saw when attempting to
18 purchase the OPAP's products. The customers did not purchase the pharmaceuticals from the
19 Affiliate websites, but were usually electronically re-directed customers to the Merchant site
20 where the purchase occurred.

21 12. Merchant web sites were the online stores from which customers ultimately
22 purchased pharmaceuticals. These sites took the customer's order, collected the money via credit
23 card or other electronic means, directed OPAP physicians to approve drug orders, fulfilled the
24 orders through a Pharmacy Network and shipped the products to the customer. When a customer
25 entered a Merchant web site and clicked to purchase an item, the Merchant web site prompted the
26 customer to provide his/her biographical information, shipping information, payment method and
27 a medical history in the form of an online questionnaire. The data provided by the customer was
28

1 stored in a database that was accessible through a web-based interface by OPAP physicians who
2 viewed and approved, and pharmacies that filled and shipped, pending orders.

3 13. A Physician Network used by the OPAP consisted of one or more doctors who
4 were recruited and contracted by the OPAP to approve drug orders for customers ordering from
5 the Merchant site. After the customer submitted a request to purchase pharmaceuticals, the
6 Merchant site electronically stored the order details until the order was accessed by a network
7 physician. The physician accessed the Merchant site's "back end" by providing his or her user
8 identification and password. This "back end" consisted of a database and administrative tools
9 that were not accessible to the general public. The physician subsequently reviewed the
10 customer's request, clicked a box to approve the order and then clicked a button to submit the
11 now approved order to the Pharmacy Network for filling.

12 14. An OPAP used one or more contracted pharmacies of a Pharmacy Network to fill
13 a customer's drug order. Similar to the network physician, an employee of the network
14 pharmacy accessed the Merchant "back end" site by providing a user name and password and
15 then identified the orders that the pharmacy could fill and ship. Through web-based software, the
16 Merchant site generated a label for the pill bottle containing pertinent information about the
17 consumer, the pharmaceutical, the approving physician and the participating pharmacy. The
18 software also generated the appropriate pharmaceutical advisory/contraindication sheet and a
19 shipping label bearing the consumer's name and address. Once the participating pharmacy filled
20 the prescription, they packaged it, attached the preprinted label and shipped it to the customer via
21 a commercial courier service, most frequently Federal Express or United Parcel Service.

22 DEFENDANTS AND RELATED ENTITIES

23 15. UNITED CARE PHARMACY obtained a DEA retail pharmacy registration on
24 June 6, 2005 for 2420 S. 17th Street, Unit C, Wilmington, North Carolina. UNITED CARE
25 PHARMACY's DEA registration was surrendered on March 8, 2006 after the North Carolina
26 Board of Pharmacy executed a Summary Suspension Order.

27 16. ANDREW RUSSO was the president and sole director of UNITED CARE
28 PHARMACIES, INC. and was the organizer of UNITED CARE PHARMACY, LLC. UNITED

1 CARE PHARMACIES, INC., was a Nevada corporation incorporated on or about May 26, 2005.
2 UNITED CARE PHARMACY, LLC was a North Carolina Limited Liability Company organized
3 on or about May 23, 2005. ANDREW RUSSO was the Chief Operating Officer ("C.O.O.") of
4 UNITED CARE PHARMACY. UNITED CARE PHARMACY distributed and dispensed
5 controlled substances and other prescription drugs for OPAP/OPANs operated by other
6 individuals and also distributed and dispensed controlled substances for an OPAP/OPAN
7 controlled by the same individuals that operated UNITED CARE PHARMACY.

8 17. DENIS LEBORGNE was ANDREW RUSSO's partner and the Chief Technology
9 Officer ("C.T.O.") in the operations of UNITED CARE PHARMACY and the associated web
10 sites. From in or about March 2005 through at least January 2006, DENIS LEBORGNE was the
11 C.T.O. for UNITED CARE PHARMACY. DENIS LEBORGNE's responsibilities included the
12 recruitment of affiliates, securing online payment processing, establishing merchant accounts,
13 and software integration.

14 18. Defendant DAVID JOHN was the Chief Financial Officer ("C.F.O.") for
15 UNITED CARE PHARMACY. From in or about March 2005 through in or about November
16 2005, DAVID JOHN's responsibilities as C.F.O. included the ordering of pharmaceuticals,
17 record-keeping, and collecting payments from the web site owners.

18 19. Defendant JOHN F. TUIITE, Registered Pharmacist, was a pharmacist licensed in
19 the State of North Carolina. Defendant TUIITE authorized fraudulent prescriptions to be filled by
20 UNITED CARE PHARMACY between in or about September 2005 and March 2006.

21 OTHER ENTITIES

22 20. MSN Hotmail ("Hotmail") was an Internet Service Provider ("ISP") with
23 computer servers located in the Northern District of California.

24 21. Yahoo! was an ISP with computer servers located in the Northern District of
25 California.

26 22. Federal Express ("Fed Ex") was a commercial shipping company that provided
27 express, ground, freight, and expedited shipping services to its customers across the United
28 States.

1 23. United Parcel Service ("UPS") was a commercial shipping company that provided
2 express, ground, freight, and expedited shipping services to its customers across the United
3 States.

4 24. AmerisourceBergen was a pharmaceutical wholesaler located in Valley Forge,
5 Pennsylvania. Payments to Amerisource or Bergen Brunswick after August 2001 went to
6 AmerisourceBergen.

7 25. Stat Pharmaceuticals was a pharmaceutical wholesaler located in Santee,
8 California.

9 26. Heartland Payment Systems ("Heartland") was a credit and debit card, payroll
10 and related processing services company that provided services to retail merchants throughout
11 the United States.

12 COUNT ONE: (21 U.S.C. § 846 – Conspiracy to Distribute Controlled Substances)

13 27. The factual allegations of paragraphs 1 through 26 above are realleged and
14 incorporated herein by reference.

15 28. Beginning no later than in or about March 2005, and continuing until on or about
16 March 8, 2006, in the Northern District of California and elsewhere, defendants,

17 ANDREW THOMAS RUSSO,
18 DENIS LEBORGNE,
19 DAVID JOHN, and
 JOHN F. TUIE,

20 did knowingly conspire and agree with others known and unknown to the Grand Jury, to:

- 21 (a) distribute and dispense various Schedule IV controlled substances, including but
22 not limited to, quantities of Phentermine, a Schedule IV controlled substance,
23 other than for a legitimate medical purpose, and not in the course of professional
24 practice, in violation of Title 21, United States Code, Sections 841(a)(1),
25 841(b)(2), and Title 21, Code of Federal Regulations, Section 1306.04; and
26 (b) use a communication facility in committing and in causing and facilitating the
27 distribution and dispensing of Schedule IV controlled substances, including but
28 not limited to, Phentermine, a Schedule IV controlled substance, other than for a

1 legitimate medical purpose and not in the usual course of professional practice, in
2 violation of Title 21, United States Code, Sections 841(a)(1), 841(b)(2), and
3 843(b), and Title 21, Code of Federal Regulations, Section 1306.04.

4 OBJECT OF THE CONSPIRACY

5 29. It was the object of the conspiracy to sell, via the Internet, controlled substances to
6 consumers in the United States and to distribute and dispense those controlled substances from
7 UNITED CARE PHARMACY. Defendants' process for selling controlled substances violated
8 the federal requirements under the CSA, regulations set forth in the Code of Federal Regulations,
9 and various state laws requiring that controlled substances be dispensed only for a legitimate
10 medical purpose and in the usual course of professional medical practice.

11 MANNER AND MEANS OF THE CONSPIRACY

12 30. It was a part of the conspiracy that the defendants established a pharmacy and
13 associated the pharmacy with an OPAP operated by other individuals to distribute
14 pharmaceuticals as well as distributing pharmaceuticals for an OPAP operated by several
15 members of the conspiracy to citizens of the United States, without requiring a face-to-face
16 meeting or any consultation with a physician. The defendants obtained money from OPAP
17 owners for distributing and dispensing drug orders obtained via the Internet. In addition, the
18 defendants obtained money from customers through web sites that represented that a physician
19 would review an online health questionnaire completed by the customer and issue a valid and
20 lawful prescription that would be filled by a licensed pharmacy, when in truth and in fact, there
21 was no meaningful physician review prior to approval, and no valid and lawful prescription was
22 issued.

23 31. It was further part of the conspiracy that the defendants caused the controlled
24 substances to be distributed and dispensed to customers without: an adequate patient history;
25 performing a mental or physical exam; using appropriate diagnostic or laboratory testing; or
26 providing a means to monitor medication response. Generally, the order form was the only
27 contact with the customer.

28 32. It was further part of the conspiracy that defendants ANDREW THOMAS

1 RUSSO, DENIS LEBORGNE, DAVID JOHN, and JOHN F. TUIITE were owners, operators,
2 corporate officers, directors, and/or managers of the pharmacy and company that operated certain
3 of the web sites through which defendants sold and distributed controlled substances.

4 33. It was further part of the conspiracy that defendant JOHN F. TUIITE was a
5 pharmacist who authorized the distribution and dispensing of controlled substances, including
6 Phentermine, after failing to confirm that there was a legitimate physician/patient relationship
7 established prior to distributing the controlled substances and did so for other than a legitimate
8 medical purpose and not in the usual course of professional practice.

9 OVERT ACTS

10 34. In furtherance of the conspiracy and to achieve its objects, the following overt
11 acts, among others were committed in the Northern District of California and elsewhere:

- 12 a. On March 22, 2005, ANDREW THOMAS RUSSO contacted Healthcare
13 Consultants via his e-mail account, tomrusso58@hotmail.com, to obtain
14 information to set up UNITED CARE PHARMACY.
- 15 b. In or about April 2005, DENIS LEBORGNE sent an e-mail to
16 tomrusso58@hotmail.com and davidjohncpa@yahoo.com setting out the business
17 plan for UNITED CARE PHARMACY.
- 18 c. In or about April 2005, DAVID JOHN sent an e-mail to
19 tomrusso58@hotmail.com setting out a business plan for UNITED CARE
20 PHARMACY.
- 21 d. On or about April 19, 2005, ANDREW THOMAS RUSSO submitted an
22 electronic application to the DEA to obtain a DEA number allowing UNITED
23 CARE PHARMACY to dispense controlled substances.
- 24 e. On or about May 5, 2005, ANDREW THOMAS RUSSO submitted an application
25 to set up an account with Heartland to process credit card payments for UNITED
26 CARE PHARMACY.
- 27 f. On May 10, 2005, DENIS LEBORGNE sent an e-mail to, among others,
28 ANDREW THOMAS RUSSO at tomrusso58@hotmail.com describing how the

1 organization planned to operate UNITED CARE PHARMACIES, the mail and
2 call center affiliates, physicians network and the existing online pharmacies. In
3 addition, the e-mail described three (3) phases as follows: (1.) Mail/call center
4 affiliates, (2.) doctor affiliates and (3.) existing online pharmacies.

5 g. On or about May 23, 2005, ANDREW THOMAS RUSSO filed articles of
6 incorporation with the state of North Carolina to establish UNITED CARE
7 PHARMACY, LLC.

8 h. On or about August 1, 2005, DENIS LEBORGNE sent an e-mail to "Martin"
9 inquiring as to the requirements to use "Martin's" computer back end services as
10 part of UNITED CARE PHARMACY's OPAP.

11 i. On or about August 22, 2005, DENIS LEBORGNE sent an e-mail to
12 info@treppides.com and carbon copied ANDREW THOMAS RUSSO's e-mail
13 account, tomrusso58@hotmail.com, stating that DENIS LEBORGNE needed to
14 establish a European Union ("EU") "shelf company" and that DENIS
15 LEBORGNE would wire the money from a merchant account to pay for the
16 associated fees.

17 j. On or about August 25, 2005, ANDREW THOMAS RUSSO wired \$3,500 to a
18 bank in Cyprus to pay the fees for the EU "shelf company."

19 k. On or about September 27, 2005, ANDREW THOMAS RUSSO submitted a new
20 account form to Stat Pharmaceuticals.

21 l. On or about September 23, 2005, DENIS LEBORGNE sent an e-mail with a
22 subject of "3 personal accounts needed" to info@treppides.com and carbon copied
23 tomrusso58@hotmail.com and Salvator Lamorte, a/k/a Sal Lamorte at
24 slamorte@hushmail.com, advising "Andreas" that DENIS LEBORGNE wanted to
25 open bank accounts in Cyprus for ANDREW THOMAS RUSSO, DENIS
26 LEBORGNE and Sal Lamorte and asked "Andreas" to forward the necessary
27 information on how to transfer funds in and out of those accounts.
28

- m. On or about the dates set forth in the table below, UNITED CARE PHARMACY caused to be delivered the following quantities of Phentermine to the Northern District of California:

| Date | Quantity of Phentermine |
|-------------------|-------------------------|
| October 4, 2005 | 30 tablets |
| November 18, 2005 | 90 tablets |
| December 7, 2005 | 90 tablets |
| December 7, 2005 | 90 tablets |
| January 31, 2006 | 90 tablets |
| March 2, 2006 | 30 tablets |
| March 2, 2006 | 90 tablets |

- n. On or about the dates set forth in the table below, ANDREW THOMAS RUSSO wired the amounts in the following table to Wells Fargo in the Northern District of California and into an account belonging to an Affiliate of the OPAP operated by ANDREW THOMAS RUSSO, DENIS LEBORGNE, and DAVID JOHN:

| Date | Amount of wire |
|-------------------|----------------|
| October 18, 2005 | \$3,349.10 |
| November 7, 2005 | \$864.00 |
| November 15, 2005 | \$1,758.10 |
| November 22, 2005 | \$2,735.00 |
| December 2, 2005 | \$13,818.50 |
| December 9, 2005 | \$7,935.70 |
| December 13, 2005 | \$3,247.80 |
| December 29, 2005 | \$6,656.21 |

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1 COUNT TWO: (18 U.S.C. § 1956(h) - Conspiracy to Launder Money)

2 35. The factual allegations of paragraphs 1 through 34 above are realleged and
3 incorporated herein by reference.

4 36. Beginning in or about March 2005, the exact date being unknown, and continuing
5 until in or about January 2006, in the Northern District of California and elsewhere, defendants

6 ANDREW THOMAS RUSSO,
7 DENIS LEBORGNE, and
8 DAVID JOHN,

9 did knowingly conspire and agree with others known and unknown to the Grand Jury, to launder
10 money in violation of Title 18, United States Code, Section 1956(a)(1)(A)(i).

11 OBJECT OF THE CONSPIRACY

12 37. The object of the conspiracy was for the conspirators to obtain large quantities of
13 funds, thereby enriching themselves, in exchange for distributing and dispensing controlled
14 substances for other than a legitimate medical purpose and not in the usual course of professional
15 practice.

16 MANNER AND MEANS

17 38. It was part of the money laundering conspiracy that:

- 18 a. defendants shipped customers controlled substances as previously described in
19 paragraphs 1 through 34 above;
- 20 b. defendants obtained customers' fees for the distribution of controlled substances,
21 knowing that the payment of those fees constituted the proceeds of unlawful
22 activity;
- 23 c. after receiving funds in payment of the fees charged to the customers, defendants
24 caused the funds to be deposited into bank accounts of the various entities and
25 individuals involved in the conspiracy; and
- 26 d. defendants then caused transfers of money from those bank accounts for the
27 purpose of paying the expenses incurred to conduct the unlawful drug sales, such
28 as shipping bills, wholesale prescription drug bills, pharmacy dispensing bills,

rent, and employee salaries, with the intent to further promote the ongoing unlawful drug sales.

OVERT ACTS

39. In furtherance of the conspiracy and to achieve its objects, the following overt acts, among others were committed in the Northern District of California and elsewhere:

- a. On or about August 22, 2005, DENIS LEBORGNE sent an e-mail to info@treppides.com and carbon copied ANDREW THOMAS RUSSO's e-mail account, tomrusso58@hotmail.com, stating that DENIS LEBORGNE needed to establish a European Union ("EU") "shelf company" and that DENIS LEBORGNE would wire the money from a merchant account to pay for the associated fees.
- b. On or about August 25, 2005, ANDREW THOMAS RUSSO wired \$3,500 to a bank account in Cyprus to pay the fees for the EU "shelf company."
- c. On or about September 23, 2005, DENIS LEBORGNE sent an e-mail with a subject of "3 personal accounts needed" to info@treppides.com and carbon copied tomrusso58@hotmail.com and Salvator Lamorte, a/k/a Sal Lamorte at slamorte@hushmail.com, advising "Andreas" that DENIS LEBORGNE wanted to open Cypriot accounts for ANDREW THOMAS RUSSO, DENIS LEBORGNE and Sal Lamorte and asked "Andreas" to forward the necessary information on how to transfer funds in and out of those accounts.
- d. On or about the dates set forth in the table below, ANDREW THOMAS RUSSO wired the amounts in the following table to Wells Fargo in the Northern District of California and into an account belonging to an Affiliate of the OPAP operated by ANDREW THOMAS RUSSO, DENIS LEBORGNE, and DAVID JOHN:

| Date | Amount of wire |
|-------------------|----------------|
| October 18, 2005 | \$3,349.10 |
| November 7, 2005 | \$864.00 |
| November 15, 2005 | \$1,758.10 |

| Date | Amount of wire |
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| November 22, 2005 | \$2,735.00 |
| December 2, 2005 | \$13,818.50 |
| December 9, 2005 | \$7,935.70 |
| December 13, 2005 | \$3,247.80 |
| December 29, 2005 | \$6,656.21 |

e. On or about the dates set forth in the table below, ANDREW THOMAS RUSSO wired the following amounts to companies from which UNITED CARE PHARMACY obtained pharmaceuticals and services to operate UNITED CARE PHARMACY:

| Date | Amount | Recipient |
|-------------------|--------------|------------------|
| October 6, 2005 | \$154,073.53 | Bergen Brunswick |
| October 14, 2005 | \$276,217.86 | Bergen Brunswick |
| October 27, 2005 | \$250,000.00 | Amerisource |
| November 3, 2005 | \$250,000.00 | Bergen Brunswick |
| November 21, 2005 | \$400,000.00 | Amerisource |
| November 22, 2005 | \$139,476.23 | Fed Ex |
| November 29, 2005 | \$152,174.60 | UPS |
| November 29, 2005 | \$141,365.31 | Fed Ex |
| January 9, 2006 | \$200,000.00 | Amerisource |

COUNTS THREE through TEN: (18 U.S.C. § 1956(a)(1)(A)(i) - Promotional Money Laundering)

40. The factual allegations of paragraphs 1 through 39 above are realleged and incorporated herein by reference.

41. From in or about March 2005 through at least March 2006, defendants maintained bank accounts in the names and with the account numbers as charged in the chart below, which were used to receive funds from illegally distributed controlled substances.

42. From on or about March 2005 through at least March 2006, funds from these bank accounts were used to pay expenses of the illegal drug scheme.

43. On or about the dates enumerated as to each count, in the Northern District of California, and elsewhere, defendant,

ANDREW THOMAS RUSSO and
DENIS LEBORGNE,

knowingly conducted financial transactions affecting interstate commerce, in the approximate amounts set forth below, which involved the proceeds of specified unlawful activity, that is the illegal distributing of controlled substances in violation of Title 21, United States Code, Sections 841(a), 843(b) and 846, with the intent to promote the carrying on of the specified unlawful activity, and while conducting such financial transactions knew the property involved in the financial transactions represented the proceeds of some form of unlawful activity; that is, the defendant caused monies that had been paid to the defendants for controlled substances defendants had illegally distributed through web sites controlled by the defendants to be transferred to the payees set forth below, to promote the unlawful activity in violation of Title 18, United States Code, Sections 1956(a)(1)(A)(i) and 2:

| Count | Date | Amount of wire | Sending Account | Recipient Account |
|-------|------------|----------------|---------------------------------|---------------------------------|
| 3 | 10/18/2005 | \$3,349.10 | SunTrust Acct. 1000034925817 | Wells Fargo Acct. 3117676910 |
| 4 | 11/7/2005 | \$864.00 | SunTrust Acct. 1000034925817 | Wells Fargo Acct. 3117676910 |
| 5 | 11/15/2005 | \$1,758.10 | SunTrust Acct. 1000034925817 | Wells Fargo Acct. 3117676910 |
| 6 | 11/22/2005 | \$2,735.00 | SunTrust Acct. 1000034925817 | Wells Fargo Acct. 3117676910 |
| 7 | 12/2/2005 | \$13,818.50 | SunTrust Acct. 1000034925817 | Wells Fargo Acct. 3117676910 |
| 8 | 12/9/2005 | \$7,935.70 | SunTrust Acct. 1000034925817 | Wells Fargo Acct. 3117676910 |
| 9 | 12/13/2005 | \$3,247.80 | SunTrust Acct. 1000034925817 | Wells Fargo Acct. 3117676910 |

| Count | Date | Amount of wire | Sending Account | Recipient Account |
|-------|------------|----------------|---------------------------------|---------------------------------|
| 10 | 12/29/2005 | \$6,656.21 | SunTrust Acct. 1000034925817 | Wells Fargo Acct. 3117676910 |

FIRST FORFEITURE ALLEGATION: (21 U.S.C. §§ 853(a) – Drug Forfeiture)

44. The factual allegations contained in paragraphs 1 through 34 and Count One of this Indictment are hereby realleged and by this reference fully incorporated herein for the purpose of alleging forfeiture pursuant to Title 21, United States Code, Section 853(a)(1) and (a)(2).

45. Upon a conviction of any of the offenses alleged in Counts One through Eight, defendants,

ANDREW THOMAS RUSSO,
DENIS LEBORGNE,
DAVID JOHN, and
JOHN F. TUIE,

shall forfeit to the United States all right, title and interest in property constituting and derived from any proceeds, defendants obtained, directly or indirectly, as a result of said violations, and any property used, or intended to be used, in any manner or part, to commit, or to facilitate the commission of the said violations, including but not limited to a sum of money equal to the total amount of proceeds defendants derived from the commission of said offenses.

46. If, as a result of any act or omission of the defendants, any of said property
- cannot be located upon the exercise of due diligence;
 - has been transferred or sold to or deposited with, a third person;
 - has been placed beyond the jurisdiction of the Court;
 - has been substantially diminished in value; or
 - has been commingled with other property which cannot be divided without difficulty;

any and all interest defendants have in any other property up, to value of the property described in paragraph 45 above, shall be forfeited to the United States pursuant to Title 21, United States Code, Section 853(p).

All in violation of Title 21, United States Code, Sections 853(a)(1),(a)(2), (p) and Rule 32.2 of the Federal Rules of Criminal Procedure.

SECOND FORFEITURE ALLEGATION : (18 U.S.C. § 982(a)(1) – Money Laundering Forfeiture)

47. The factual allegations contained in paragraphs 1 through 45 and Counts Nine through Seventeen of this Indictment are hereby realleged and by this reference fully incorporated herein for the purpose of alleging forfeiture pursuant to Title 18, United States Code, Section 982(a)(1).

48. Upon a conviction of any of the offenses alleged in Counts Two through Ten, defendants,

ANDREW THOMAS RUSSO,
DENIS LEBORGNE, and
DAVID JOHN,

shall forfeit to the United States, pursuant to Title 18, United States Code, Section 982(a)(1), all right, title and interest in property, real and personal, involved in said violation, or any property traceable to such property, including but not limited to the following:

- a. all commission, fees and other property constituting proceeds of said offense;
- b. all property used in any manner to commit or facilitate the commission of said offense;
- c. a sum of money equal to the total amount of money involved in the commission of said offense.

49. If, as a result of any act or omission of the defendants, any of said property

- a. cannot be located upon the exercise of due diligence;
- b. has been transferred or sold to or deposited with, a third person;
- c. has been placed beyond the jurisdiction of the Court;
- d. has been substantially diminished in value; or

e. has been commingled with other property which cannot be divided without difficulty;

any and all interest defendants have in any other property, up to value of the property described in paragraph 48 above, shall be forfeited to the United States, pursuant to Title 21, United States Code, Section 853(p), as incorporated by Title 18, United States Code, Section 982(b)(1).


All in violation of Title 18, United States Code, Sections 982, 1956, and Rule 32.2 of the Federal Rules of Criminal Procedure.

DATED: 15 NOV 06

A TRUE BILL.


FOREPERSON

KEVIN V. RYAN
United States Attorney


W. DOUGLAS SPRAGUE
Acting Chief, Criminal Division

(Approved as to form: )
AUSA KEWALRAMANI

DEFENDANT INFORMATION RELATIVE TO A CRIMINAL ACTION - IN U.S. DISTRICT COURT

• BY: ☐ COMPLAINT ☐ INFORMATION ☒ INDICTMENT
☐ SUPERSEDING

Name of District Court, and/or Judge/Magistrate Location

NORTHERN DISTRICT OF CALIFORNIA

OFFENSE CHARGED

Count One: Title 21 § 846 - Conspiracy to distribute controlled substances
 Count Two: Title 18 § 1956(h) - Conspiracy to launder funds
 Counts Three-Ten - Title 18 § 1956(a)(1)(A)(i) - Money Laundering

☐ Petty
☐ Minor
☐ Misdemeanor
☒ Felony

PENALTY:

Count 1 - 3 years imprisonment, \$250,000 fine, 1 year supervised release, \$100 special assessment
 Counts 2-10 - 20 years imprisonment, \$500,000 or twice the value of property involved, 3 years supervised release

PROCEEDING

Name of Complainant Agency, or Person (& Title, if any)

S/A Brandon Bridgers - DEA

☐ person is awaiting trial in another Federal or State Court, give name of court

☐ this person/proceeding is transferred from another district per (circle one) FRCrP 20, 21 or 40. Show District

☐ this is a reprosecution of charges previously dismissed which were dismissed on motion of:

☐ U.S. Att'y ☐ Defense

☐ this prosecution relates to a pending case involving this same defendant

☐ prior proceedings or appearance(s) before U.S. Magistrate regarding this defendant were recorded under

SHOW DOCKET NO.

MAGISTRATE CASE NO.

Name and Office of Person
 Furnishing Information on
 THIS FORM

KEVIN V. RYAN

☒ U.S. Att'y ☐ Other U.S. Agency

Name of Asst. U.S. Att'y
 (if assigned)

H. H. (SHASHI) KEWALRAMANI

Name of District Court, and/or Judge/Magistrate Location

NORTHERN DISTRICT OF CALIFORNIA

FILED

2006 NOV 15 A 11:52

ANDREW THOMAS RUSSO

DISTRICT COURT NUMBER

RICHARD W. WIEKING
 CLERK
 U.S. DISTRICT COURT
 NO. DIST. OF CA. S. J.

CR 06 00748 RMW**DEFENDANT****IS NOT IN CUSTODY**

- 1) ☒ Has not been arrested, pending outcome this proceeding.
 If not detained give date any prior summons was served on above charges
- 2) ☐ Is a Fugitive
- 3) ☐ Is on Bail or Release from (show District)

IS IN CUSTODY

- 4) ☐ On this charge
- 5) ☐ On another conviction
- 6) ☐ Awaiting trial on other charges
- If answer to (6) is "Yes", show name of institution

Has detainer
 been filed?

☐ Yes
☐ No

If "Yes"
 give date
 filed

**DATE OF
 ARREST**

Month/Day/Year

Or... if Arresting Agency & Warrant were not

Month/Day/Year

**DATE TRANSFERRED
 TO U.S. CUSTODY**

☐ This report amends AO 257 previously submitted

ADDITIONAL INFORMATION OR COMMENTS**PROCESS:**

☐ SUMMONS ☐ NO PROCESS*

☒ WARRANT Bail Amount: _____

If Summons, complete following:

☐ Arraignment ☐ Initial Appearance

Defendant Address: _____

*Where defendant previously apprehended on complaint, no new summons or warrant needed, since Magistrate has scheduled arraignment

Date/Time: _____

Before Judge: _____

Comments: _____

DEFENDANT INFORMATION RELATIVE TO A CRIMINAL ACTION - IN U.S. DISTRICT COURT

BY: ☐ COMPLAINT ☐ INFORMATION ☒ INDICTMENT
☐ SUPERSEDING

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 NORTHERN DISTRICT OF CALIFORNIA

OFFENSE CHARGED

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☒ Felony

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☐ prior proceedings or appearance(s) before U.S. Magistrate regarding this defendant were recorded under

SHOW
DOCKET NO.

MAGISTRATE
CASE NO.

Name and Office of Person
Furnishing Information on
THIS FORM

KEVIN V. RYAN

☒ U.S. Att'y ☐ Other U.S. Agency

Name of Asst. U.S. Att'y
(if assigned)

H. H. (SHASHI) KEWALRAMANI

DEFENDANT - U.S.

2006 NOV 15 A 11:52

DENIS LEBORGNE

RICHARD W. WIEKING
CLERK

DISTRICT COURT NUMBER U.S. DISTRICT COURT
NO. DIST. OF CA. S.J.

06 00748 RMW

DEFENDANT

HRL

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Has detainer been filed? ☐ Yes ☐ No

If "Yes" give date filed

DATE OF
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Before Judge: _____

Comments: _____

2

DEFENDANT INFORMATION RELATIVE TO A CRIMINAL ACTION - IN U.S. DISTRICT COURT

BY: ☐ COMPLAINT ☐ INFORMATION ☒ INDICTMENT
☐ SUPERSEDING

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☒ U.S. Att'y ☐ Other U.S. Agency

Name of Asst. U.S. Att'y
 (if assigned)

H. H. (SHASHI) KEWALRAMANI

Name of District Court, and/or Judge/Magistrate Location

NORTHERN DISTRICT OF CALIFORNIA

FILED

DEFENDANT - U.S.

2006 NOV 15 A 11:53

DAVID JOHN

RICHARD W. WIEKING
 CLERK
 U.S. DISTRICT COURT
 NO. DIST. OF CA. S.J.

DISTRICT COURT NUMBER

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 give date
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DEFENDANT - U.S. 7006 NOV 15 A 11:53

JOHN TUI TE

RICHARD W. WIEKING

CLERK

DISTRICT COURT NUMBERS DISTRICT COURT NO. DIST. OF CA. S.J.

CR 06 00748 RMW

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DATE OF ARREST

Month/Day/Year

Or... if Arresting Agency & Warrant were not

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